

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

**BUILDING CODE APPEALS BOARD
DOCKET NO.: 11-1002**

Keith Moskow,
Appellant

v.

City of Cambridge,
Appellees

BOARD'S RULING ON APPEAL

Introduction

This matter came before the State Building Code Appeals Board ("Board") on appellant's appeal filed pursuant to G.L. c.143, §100 and 780 CMR 122.1. In accordance with 780 CMR 122.3 Appellant petitioned the Board to grant a variance from Section 5302.2 of the Eighth Edition of the Massachusetts State Building Code ("Code") prohibiting openings in exterior walls of a dwelling with a fire separation distance less than three feet. For the following reasons, the Board grants Appellant a variance from 780 CMR 5302.2.

Procedural History

The Board convened a public hearing on May 17, 2011, in accordance with G.L. c. 30A, §§10 & 11; G.L. c. 143, §100; 801 CMR 1.02; and 780 CMR 122.3. All interested parties were provided an opportunity to testify and present evidence to the Board. Robert Linn, partner of Moskow Linn Architects, appeared on behalf of the appellant. All witnesses were duly sworn.

Findings of Fact

The Board bases the following findings upon the testimony presented at the hearing. There is substantial evidence to support the following findings:

1. The property at issue is located at 209 Lake View Avenue, Cambridge, MA.
2. Appellant seeks to build a 514-square-foot addition ('addition') to the basement and first floor of the building including two windows on the south side of the property.
3. The property line is one foot from the addition on the south side of the property.
4. A three-foot no-build easement runs the length of the house on the south side of the property.

Discussion

A. Jurisdiction of the Board

There is no question that the Board has jurisdiction to hear this case. The governing statute provides that:

Whoever is aggrieved by an interpretation, order, requirement, direction or failure to act by any state or local agency or any person or state or local agency charged with the administration or enforcement of the state building code or any of its rules and regulations, except any specialized codes as described in section ninety-six, may within forty-five days after the service of notice thereof appeal from such interpretation, order, requirement, direction, or failure to act to the appeals board. G.L. c.143, §100.

The issues giving rise to this matter directly implicate provisions of the Code. As such, this Board has jurisdiction to decide this case pursuant to G.L. c. 143, §100.

B. State Building Code requirements

The issue in this case is whether the Appellant's no-build easement suffices to satisfy the three-foot fire separation distance, which would allow for the windows in the addition. Section 53202.2 of 780 CMR provides that "[o]penings shall not be permitted in the exterior wall of a dwelling or accessory building with a fire separation distance less than three feet." Although the property line is only one foot from the addition, the three-foot no-build easement extends the fire separation distance to four feet. This extension suggests that a variance from 780 CMR 5302.2 is appropriate.

Conclusion

Brian Gale motioned to **grant** a variance from 780 CMR 5302.2 requiring a three-foot fire separation distance due to the no-build easement. Jake Nunnemacher seconded his motion. The motion passed unanimously. Appellant's request for variance is hereby granted.

Jacob Nunnemacher

Doug Semple

Brian Gale

Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to Superior Court in accordance with G.L. c.30A, §14 within 30 days of receipt of this decision.

DATED: June 16, 2011